UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ANDREAS SORIANO CORTES,	)	
	)	
Plaintiff	)	
	)	
v.	)	Civil 99-CV-19-B
	)	
SUPERIOR FORESTRY SERVICES, INC.,	)	
	)	
Defendant	)	

ORDER AND MEMORANDUM

BRODY, J.

Lorenzo Soriano Cortes ("Cortes") was traveling as a passenger in his employer's van when it crashed on its way to a work site in the forests of Aroostook County. Cortes died as a result of the injuries he sustained in this crash. The representative of his estate, Plaintiff Andreas Soriano Cortes ("Plaintiff"), now brings claims against Cortes' former employer, Superior Forestry Service Inc. ("Superior" or "Defendant"), for negligence, negligent entrustment, wrongful death, and punitive damages. Before the Court is Superior's Motion for Summary Judgment, in which Superior argues that Cortes' common law claims are barred by the exclusivity and immunity provisions of the Maine Workers' Compensation Act ("MWCA"), 39-A M.R.S.A. §§ 104, 408. For the following reasons, Superior's Motion is GRANTED.

I. SUMMARY JUDGMENT

Summary judgment is appropriate in the absence of a genuine issue as to any material fact and when the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c). An issue is genuine for these purposes if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A

material fact is one that has "the potential to affect the outcome of the suit under the applicable law." Nereida-Gonzalez v. Tirado-Delgado, 990 F.2d 701, 703 (1st Cir. 1993). Facts may be drawn from "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits." Fed. R. Civ. P. 56(c). "Fed. R. Civ. P. 56 does not ask which party's evidence is more plentiful, or better credentialled, or stronger." Greenburg v. Puerto Rico Maritime Shipping Auth., 835 F.2d 932, 936 (1st Cir. 1987). Rather, for the purposes of summary judgment the Court views the record in the light most favorable to the nonmoving party. See McCarthy v. Northwest Airlines, Inc., 56 F.3d 313, 315 (1st Cir. 1995).

II. FACTUAL BACKGROUND

In the summer of 1998, Superior performed "thinning" operations in the forests of Aroostook County. To carry out these operations, Superior hired primarily Mexican migrant workers, who, in the spring or early summer, arrived at Superior's headquarters in Tilly, Arkansas. Once in Tilly, Superior divided up the Mexican migrant workers and other employees into work crews, and sent one crew, containing Cortes and fourteen other workers, off to Aroostook County in a van owned by Superior and driven by Carmerino Solano ("Solano"), who served as crew foreman and driver for the summer. At the end of the season, Superior planned on driving these workers back to Tilly in the same van.

This van was the sole source of transportation for Cortes and his co-workers, and Superior paid for all transportation expenses. Solano drove the workers between their temporary local housing and the work sites, between different work sites, between different housing locations when they moved on to new job sites, and into towns where they could shop, wash laundry, and perform other errands. In addition, the van transported equipment to the work sites.

The workers were not paid for their travel time, unless they performed work-related tasks before heading off to a job site. In addition, the workers paid for their lodging while in Maine, although Superior assisted the workers in securing this housing.

On June 26, 1998, Solano drove the fourteen crew members, including Cortes, from their temporary housing in Portage Lake, Maine, to the day's work site fifty miles away. On the way to the site, the van crashed. Cortes and one other worker died as a result of the injuries they sustained in this accident. Plaintiff alleges that Superior was negligent with regard to this crash because: (1) Solano was driving at an excessive and unsafe rate of speed, (2) he did not have a valid Maine license at the time, (3) the van had an inoperable cell phone, delaying medical assistance, and (4) the number of passengers in the van, fifteen, was excessive and unsafe.

Superior had workers' compensation insurance with Maine Employers Mutual Insurance Company ("Maine Employers"), which reimbursed most of the expenses Superior incurred in returning Cortes' body to Mexico and paying for his funeral. In addition, Maine Employers paid workers' compensation benefits to every other crew member in the van at the time of the accident. Plaintiff originally filed for workers' compensation benefits, but did so only to preserve his rights in the event this Court determines that Cortes' death arose out of and in the course of his employment. Before the Workers' Compensation Board dismissed those proceedings without prejudice at the request of Plaintiff, Maine Employers admitted that Cortes' death arose out of and in the course of his employment, and only challenged whether any person was entitled to payment as a dependent of Cortes.

III. DISCUSSION

Superior argues that Plaintiff's claims are barred by the immunity and exclusivity provisions of the Maine Workers' Compensation Act ("MWCA"). See 39-A M.R.S.A. §§ 104, 408.[1] In response to this defense, Plaintiff argues that Cortes' death is not covered under workers' compensation because it falls under an exception to coverage known as the "rideshare" provision. See 39-A M.R.S.A. § 201(2). This provision states that:

> An employee injured while participating in a private, group or employer sponsored car pool, van pool, commuter bus service or other rideshare program, having as its sole purpose the mass transportation of employees to and from work, for the purposes of this Act, shall not be deemed to have received personal injury arising out of or in the course of his employment....

39-A M.R.S.A. § 201(2). The Statement of Facts attached to the provision and quoted by the Maine Supreme Court in Croteau-Robinson v. Merrill Trust/Fleet Bank, 669 A.2d 763 (Me. 1996), declares that the purpose of the rideshare exception is to:

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[1] These two provisions state that:

> [a]n employer who has secured the payment of compensation in conformity with sections 401 to 407 is exempt from civil actions, either at common law or under sections 901 to 908; Title 14, sections 8101 to 8118; and Title 18-A, section 2-804, involving personal injuries sustained by an employee arising out of and in the course of employment....

39-A M.R.S.A. § 104. The Act goes on to state that:

> an employee of an employer who has secured the payment of compensation as provided ... is deemed to have waived the employee's right of action at common law ... to recover damages for the injuries sustained by the employee.

Id. at § 408.

Cortes' status as a migrant worker does not impact the application of the MWCA. Under the Migrant and Seasonal Agricultural Protection Act ("MSPA"), 29 U.S.C. §§ 1801 et seq., migrant workers are covered under the workers' compensation law of the state in which they are working. The MSPA, in relevant part, provides that "where a State workers' compensation law is applicable and coverage is provided for a migrant or seasonal agricultural worker, the workers' compensation benefits shall be the exclusive remedy for loss of such worker under this chapter in the case of bodily injury or death in accordance with such State's workers' compensation law." Id. § 1854(d)(1).

> encourage individuals, groups and private employers, in the interest of energy conservation, to organize, sponsor and participate in various rideshare programs by expressly stating that an employee injured while participating in various rideshare programs shall not be eligible for workers' compensation benefits unless the injured employee received compensation for his participation.

Id. at 764 (quoting L.D. 812, Statement of Fact (110th Legis. 1981)).

Prior to the enactment of the rideshare provision, the traditional "public streets" or "coming and going" rule provided that an employee could not recover workers' compensation benefits for injuries that occur during a commute to and from work, unless the employer provided or controlled the transportation. Croteau-Robinson, 669 A.2d at 764 (citing Boyce v. Potter, 642 A.2d 1342, 1343-44 (Me.1994); 1 A. Larson, The Law of Workmen's Compensation §§ 17.11, 17.40 (1993)). The rideshare provision extended the "public streets" rule by creating a limited exception to the rule of workers' compensation liability for employer-provided transportation to and from work. See id. Nonetheless, such an extension leaves within the purview of workers' compensation employer-provided and/or employer-controlled transportation that does more than simply transport employees "to and from work."

The Maine Supreme Court has interpreted the rideshare provision only twice, and both times it has given the provision a narrow construction. The first case, Boyce v. Potter, 642 A.2d 1342 (Me.1994), involved two co-workers who were in a car accident on their way to a job site. See id. at 1343. The passenger sued the driver in tort for personal injuries, and, in response, the driver argued that workers' compensation provided the passenger with his sole remedy. See id. In ruling that the MWCA applied, the Law Court reasoned that the two were "traveling employees [because] travel [was] an integral part of their job, their job site [had] no fixed location, and they were paid by their employer for their travel time." Id. In a short paragraph, the

Law Court dismissed the plaintiff's argument that the rideshare provision exempted the application of workers' compensation. See id. at 1344. The Law Court stated that the rideshare provision "simply insures that the public streets rule is not abrogated because the employee participates in either an employer-sponsored or private car pool. It does not address whether the men were 'traveling employees' at the time of the accident." Id.

The second case, Croteau-Robinson, involved a woman who was injured when she fell on the step of a shuttle bus while returning to work from a lunch break. See 669 A.2d at 764. The employer provided this shuttle bus service in order to carry its employees between an employee parking lot and the employer's bank. See id. The Workers' Compensation Commission denied her petition for an award after concluding that her injury fell within the rideshare exception. See id. at 763-64. In reversing the Commission, the Maine Supreme Court found that the rideshare exception did not apply for two reasons. See id. at 764. First, the Law Court defined "rideshare" as the transportation of commuters between the workplace and home. See id. at 765. According to the Law Court, the shuttle bus did not provide transportation of commuters between work and home, but instead transported employees over a short-distance between the workplace and a satellite parking area. See id. Second, the Law Court concluded that the shuttle bus service failed to satisfy the purpose of the rideshare exception, since the shuttle service bore no relation to energy conservation, but merely sought to facilitate parking. See id.

Plaintiff argues that this case clearly falls within the plain language of the rideshare exception. He argues that Cortes was "an employee" who was fatally "injured while participating in . . . [an] employer sponsored . . . van pool having as its sole purpose the mass transportation of employees to and from work." 39-A M.R.S.A. § 201(2).

Since the van pool's "sole purpose" was not “the mass transportation of employees to and from work,” Plaintiff fails to satisfy the elements of the rideshare provision. Superior first used the van to transport the crew and all of their belongings from Arkansas to Maine. Once in Maine, the van’s role is more aptly described as an “all-purpose” van, not a van whose “sole purpose” was ridesharing. Since these workers had no alternative means of transportation after leaving Tilly, Superior provided the workers with all their transportation needs, regardless of whether they were work related. Not only did Superior drive the employees to and from work each day and between work sites, but it also provided local transportation to the workers in their off-hours so that they could buy groceries, clean their laundry, go to movie theaters, and run other errands. In addition, the van transported equipment to the work sites, including a water supply and a porta-potty in compliance with Occupational Safety and Health Administration standards. All of these activities demonstrate that the "sole purpose" of the van pool was not the transportation of these workers to and from work.[2]

In light of both the plain language of the rideshare provision, and the Maine Supreme Court's narrow construction of that provision, the Court concludes that the rideshare provision does not apply to this case. Cortes' fatal injury arose out of and in the course of his employment.

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[2] This all-purpose van was used in many capacities because Cortes and his fellow workers were in many ways traveling employees. Cortes and his co-workers were similar to the parties in Boyce: although they were not paid for their travel time, their job site had no fixed location and travel was certainly an integral part of their job. See Boyce, 642 A.2d 1343. The Boyce Court stated that "it is the job's requirement of travel and the employer's authority and control in assigning its employees to different work sites that increase the normal risk and render compensable any injury suffered during such travel." Id. at 1344 (citation omitted). Here, Superior transported these workers to different work sites far from its headquarters in Tilly, Arkansas. Such travel was not a mere commute, the costs of which an employer attempted to offset by offering a rideshare program. The travel here was a risk inherent in performing Superior’s “thinning” operations throughout remote forest locations.

Therefore, workers' compensation benefits are the exclusive remedy for all the claims arising out of his death in the van accident.

IV. CONCLUSION

Having found that Plaintiff's claims are barred by the exclusivity and immunity provisions of the Maine Workers' Compensation Act, 39-A M.R.S.A. §§ 104, 408, Defendant's Motion for Summary Judgment is GRANTED.

SO ORDERED.

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MORTON A. BRODY
United States District Judge

Dated this 15th day of March, 2000.

CLOSED STNDRD

U.S. District Court
District of Maine (Bangor)

CIVIL DOCKET FOR CASE #: 99-CV-19

CORTES v. SUPERIOR FORESTRY SV, et al — Filed: 01/25/99
Assigned to: JUDGE MORTON A. BRODY — Jury demand: Plaintiff
Demand: $0,000 — Nature of Suit: 350
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Cause: 28:1332 Diversity-Personal Injury

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CAMERINO SOLANO-ROJAS
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[term 08/23/99]